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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re D.W. et al., Persons Coming Under  
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

P.A. et al,

Defendants and Appellants.

G043882

(Super. Ct. Nos. DP016430 &  
DP016431)

O P I N I O N

Appeals from an order of the Superior Court of Orange County, Caryl Lee,  
Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for  
Defendant and Appellant P.A.

Grace Clark, under appointment by the Court of Appeal, for Defendant and  
Appellant R.H.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and  
Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

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## INTRODUCTION

P.A. (Mother) and R.H. (Father) appeal, following an order terminating their parental rights to their now seven-year-old twin sons, D.W. and A.W (collectively, children). Mother contends the juvenile court erred by finding the parent-child relationship exception to the termination of parental rights under Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i) inapplicable as to her. (All further statutory references are to the Welfare and Institutions Code.) Father “joins in Mother’s arguments on appeal,” and further argues that “[i]f the judgment terminating Mother’s parental rights is reversed, the court may not terminate Father’s parental rights” under California Rules of Court, rule 5.725(a)(2).

We affirm. For the reasons we explain *post*, Mother did not satisfy her burden to show that severing her relationship with the children would deprive them of a “substantial, positive emotional attachment such that the child[ren] would be greatly harmed.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

## BACKGROUND<sup>1</sup>

### I.

#### THE PETITION

In December 2007, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition which, as amended in February 2008 (the petition),

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<sup>1</sup> References to Father in this section are limited to those that provide context or are relevant to reviewing whether the juvenile court erred by finding the parent-child relationship exception inapplicable as to Mother.

alleged that the then four-year-old children came within the jurisdiction of the juvenile court under section 300, subdivision (b) (failure to protect).<sup>2</sup> The petition alleged that beginning in June 2007, Mother and Father participated in voluntary family services<sup>3</sup> which had been provided due to Mother's "ongoing mental and physical health issues and [Father's] difficulty in coping with these issues"; they received mental health psychiatric services, counseling, "services with a Public Health Nurse," and CalWORKs services. The petition stated Mother had ongoing physical and mental health conditions and had not provided primary care for the children for several months. In October 2007, a "Safety Plan" was signed by Mother and Father with SSA "stating that due to [M]other's unstable condition, [Father] assumes full responsibility for the care and safety of the children."

The petition further alleged that according to a police report, on December 4, 2007, Father stated he wanted to kill himself; police officers responded to the residence and found a loaded gun. Father was taken to a hospital for a psychiatric evaluation under section 5150. On December 20, Father reported that Mother threatened to kill the children and also threatened to rape and kill Father's 17-year-old daughter. He further reported Mother had locked herself in her room for two days and made statements regarding hurting herself, the children, and Father. Mother said, "mommy and daddy aren't going to be here," "I'm going to do something in your sleep," and "so these two (children) and T[.] ([F]ather's daughter) are going to die because of . . . ." (Father told a social worker that he could not understand what Mother said after the word "of.") On December 21, Mother was hospitalized under section 5150 and was unable to care for the

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<sup>2</sup> The petition alleged the children also came within the jurisdiction of the juvenile court under section 300, subdivision (g) (no provision for support). The juvenile court granted SSA's motion to dismiss that allegation.

<sup>3</sup> Mother and Father are not married. The petition alleged Mother was married to S.W. at the time of the children's birth and he is identified on their birth certificates; the petition stated S.W. has "made no recent efforts to provide care, protection, or provision for support for the children."

children, make provision for their support, or make alternative arrangements for their care. The children were taken into protective custody on December 21.<sup>4</sup>

The petition stated Mother had a history of mental illness, including depression, possible bipolar disorder, and “suicidal gestures,” for which she had been prescribed medication. Mother’s participation in counseling and mental health services was sporadic and Mother did not take her prescribed psychotropic medication regularly. Her mental illness was “an unresolved problem.” Mother also had a history of substance abuse, including, but not limited to, the abuse of cocaine, methamphetamine, and marijuana; she had been arrested three times on drug-related charges. Her substance abuse problem was also unresolved.

In addition, the petition alleged Mother has “unresolved anger management problem[s],” evidenced by several incidents of domestic violence. In March 2004, the police responded to a verbal and physical altercation by Mother against the children’s nanny. In June 2004, Mother was arrested for inflicting corporal injury on a spouse/cohabitant in an incident involving Father. In August 2005, Mother was arrested after she went into an office (having left the children in the car with the engine running), threw objects at S.W., disabled the telephone, and overturned a shelving unit. In September 2007, she allegedly assaulted S.W. in front of the children, by hitting him in the shin with a hammer and causing a gash.

As to Father, the petition alleged he had a history of substance abuse, including, but not limited to, the abuse of alcohol, methamphetamine, and marijuana, as evidenced by his arrest on June 11, 2004 for drug-related charges and his December 4, 2007 hospitalization after drinking an unspecified amount of vodka. On February 1, 2008, Father was arrested for possession of methamphetamine. He has not been able to

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<sup>4</sup> The petition added: “The children’s mother had made statements regarding harming herself and/or others.” It is not clear whether this reference is to statements Mother made before or during the psychiatric evaluation.

provide any proof of documented completion of a substance abuse treatment program. His substance abuse was an “unresolved problem.” The petition stated Father and S.W. each failed to protect the children, by continuing to allow them to live with Mother notwithstanding the “historic and recent domestic violence” by her.

## II.

THE CHILDREN ARE PLACED IN THE FOSTER HOME OF J.C. AND K.C.; MOTHER AND FATHER PLEAD NOLO CONTENDERE TO THE ALLEGATIONS OF THE PETITION; THE JUVENILE COURT ORDERS FURTHER REUNIFICATION SERVICES FOR MOTHER AND FATHER AT THE SIX-MONTH REVIEW HEARING.

In March 2008, SSA placed the children in the foster home of J.C. and K.C. (the prospective adoptive parents).

At the jurisdiction hearing in April 2008, Mother and Father pleaded nolo contendere to the allegations of the petition. Based on the jurisdiction/disposition report and the addendum reports filed by SSA, the juvenile court found a factual basis for their pleas, found the allegations of the petition true by a preponderance of the evidence, and declared the children dependent children of the juvenile court under section 360, subdivision (d). The juvenile court approved a case plan for Mother and Father.

In a status review report dated July 30, 2008, the assigned social worker reported that Mother was scheduled to participate in two-hour monitored visits with the children twice a week. Since April 1, she visited the children only nine out of the 28 scheduled visits because of her medical issues; during visits, she provided the children with a meal or snack and toys or games. Mother also participated in an average of two monitored telephone visits with the children each week. (Three monitored telephone visits were scheduled each week.)

The social worker stated the children appeared happy to see Mother and greeted her with affection; Mother was “very appropriate with the children during visits.” The social worker further reported Mother had received a psychological assessment in

January 2008; the results showed she did not require any mental health services and her “mental health condition would be responsive to treatment by a physical healthcare provider.”

The social worker reported that both Mother and Father needed to make further progress on their case plans. Although Mother completed parenting education classes, she missed some drug tests as a result of her having been placed on bed rest by her physician due to a medical problem. Father participated in drug testing and other services except during the time he was incarcerated in April 2008 for an outstanding warrant issued in connection with an illegal utilities hookup.

The social worker reported: “Both children have made tremendous progress developmentally in their current placement. Both children are almost completely potty trained . . . . The children have made progress towards decreasing tantrums, aggressive behaviors and whiny vocalizations.” The social worker stated they started attending preschool and therapy.

At the six-month review hearing, the juvenile court ordered, inter alia, that Mother and Father continue to receive reunification services, and set a 12-month review hearing.

### III.

#### THE 12-MONTH REVIEW HEARING

In a status review report dated January 21, 2009, the social worker stated Mother’s and Father’s compliance with their case plans was “moderate” during the reporting period. Mother was living in Yorba Linda, was regularly participating in drug testing, began individual counseling in October 2008 (but needed to be reinstated in November due to three missed scheduled appointments), and enrolled in an outpatient substance abuse treatment program with related group and 12-step meetings. Mother missed four visits in August and five visits in September 2008.

Since September 2008, Mother regularly participated in monitored two-hour visits twice a week with the children. On November 22, visitation was expanded to include monitored four-hour visits on Saturdays. She also telephoned the children. The children were always happy to see Mother at visits and greeted her with affection; she was very appropriate during visits; she brought the children snacks or meals, toys and books, redirected them when needed, and told them to wash their hands before eating.

The children continued to thrive in the prospective adoptive parents' home. The social worker stated: "The children continue to do well in placement. Both children are making excellent progress developmentally and their preschool teacher states both children will be ready to start Kindergarten in the fall." On January 21, 2009, the prospective adoptive parents filed a request that they be appointed the de facto parents of the children.

At the 12-month review hearing on January 21, 2009, Mother and Father stipulated that continued supervision was necessary and that return of the children to them would create a substantial risk of detriment to their physical or emotional well-being. The juvenile court granted the prospective adoptive parents' request for de facto parent status, ordered another six months of reunification services for Mother and Father, and scheduled an 18-month review hearing.

#### IV.

#### THE JUVENILE COURT TERMINATES REUNIFICATION SERVICES AND SCHEDULES A PERMANENCY HEARING AT THE 18-MONTH REVIEW HEARING.

In a status review report dated June 18, 2009, the social worker recommended the juvenile court terminate reunification services and schedule a permanency hearing at the 18-month review hearing. The social worker reported that

Mother's cooperation with the case plan had been "moderate" and Father's cooperation had been "minimal."

The report stated that five months earlier, Father moved into the residence where Mother lived with S.W., but Father had recently moved out at Mother's request because "his presence was preventing the mother from reunifying with the children." Mother was in compliance with her case plan, having completed substance abuse treatment, individual counseling, and a psychiatric assessment. Father was not in compliance with his case plan. Although he had completed a parenting education class, he was not consistent with individual counseling or drug testing. He tested positive for marijuana in June 2009.

Mother and Father attended all scheduled visits with the children during this reporting period. At the beginning of the reporting period, their weekly visitation was monitored and consisted of one two-hour visit and one four-hour visit. In February 2009, the visits became unsupervised but had to occur at a park.<sup>5</sup> At the end of the reporting period, Mother continued to participate in the six hours of unmonitored visits with the children.

The children continued to thrive in the prospective adoptive parents' home and continued to meet developmental milestones.

The social worker recommended that reunification services be terminated and that a permanency hearing be set because "[t]he statutory time limit for the mother to receive Family Reunification Services has expired; however, the undersigned believes that the mother is in a place to be given the opportunity to demonstrate her ability to adequately care for the children on a more permanent basis." Mother stipulated to an order terminating reunification services and setting a permanency hearing. The juvenile

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<sup>5</sup> In May 2009, a monitor was reinstated for Father's visits because of his failure to comply with his case plan.

court ordered reunification services terminated and scheduled a permanency hearing for October 15, 2009.

## V.

### SSA EXPANDS THE DURATION OF MOTHER'S VISITS, CULMINATING IN A 60-DAY TRIAL VISIT; SSA RECOMMENDS RETURN OF THE CHILDREN TO MOTHER; MOTHER FILES SECTION 388 PETITIONS SEEKING RETURN OF THE CHILDREN TO HER CARE.

On October 2, 2009, the social worker filed an ex parte application for the purpose of informing the juvenile court "about the current circumstances" of the children. The social worker reported a rapid and exponential increase in the length of Mother's visits with the children. On June 26, Mother was permitted to visit with the children at her residence for four hours. On July 11, Mother and the children had a 24-hour visit and on July 24, they had a 48-hour visit at Mother's residence. Mother reported that the visits went well and she enjoyed a variety of activities and outings with the children. On August 3, Mother and the children began a 60-day trial visit. Mother invited the prospective adoptive parents to participate in various activities.

In the permanency hearing report dated October 15, 2009, the social worker recommended the return of the children to Mother, the continuation of supervision, and the setting of a six-month review hearing. The social worker stated, "[t]he permanent plan of adoption no longer appears appropriate. Since the most recent hearing on June 18, 2009, the undersigned has continued to work with the mother and liberalized her visitation with the children, resulting in the children being placed with the mother on a 60-day trial visit on August 3, 2009." Mother told the social worker that she had not had contact with Father since late June 2009. It appeared to the social worker that Mother had provided a safe environment and good physical care for the children.

On October 15, 2009, Mother filed section 388 petitions as to the children, seeking an order returning them to her care.

## VI.

### THE CHILDREN ARE TAKEN BACK INTO PROTECTIVE CUSTODY AND PLACED WITH THE PROSPECTIVE ADOPTIVE PARENTS; SSA RECOMMENDS THE JUVENILE COURT DISMISS MOTHER'S SECTION 388 PETITIONS AND TERMINATE PARENTAL RIGHTS.

Before a hearing on Mother's section 388 petitions or the permanency hearing took place, SSA filed an addendum report dated November 19, 2009, stating that on November 12, the social worker had discussed with Mother the following "issues" that had arisen: (1) "[a] lot of different people pick the children up from school"; (2) the children had a high absentee rate at school; (3) a school staff member observed D.W. hit A.W. in Mother's presence and Mother did not intervene; (4) a woman named Erica was reportedly acting as "the primary caretaker for the children and completes the children's homework with them because the mother does not want to"; and (5) the children's behavior had regressed to where it was when the children had been initially taken into protective custody.

Mother told the social worker that the only people who pick up the children from school are Mother, S.W. and their neighbor, E.C. Mother stated the children's absences were attributable to illness and she did not recall any incident of D.W. striking A.W. Mother denied the children's behavior had regressed and asserted the children were succeeding in school and attending counseling.

On November 13, 2009, the social worker received a report that Father had picked up the children from school. She also learned that the children had missed 12 days of school since September 8. On November 16, the social worker received a telephone message in which Mother stated there was "an emergency" and she needed to speak with the social worker immediately. After unsuccessfully attempting to reach Mother by telephone (Mother's telephone line was out of order) and after confirming with the school that the children were absent that day, the social worker arrived at

Mother's residence around 10:50 a.m., where she saw Father and S.W. walking outside. Father told the social worker he had showed up unannounced. Mother, wearing pajamas, came outside the residence; her hair was uncombed and she appeared nervous. She told the social worker she had called her because Father had shown up; the children were inside the residence. Father stated that he had come to collect some of his tools in S.W.'s shed. Mother told the social worker that after Father heard Mother and S.W. discuss whether they should contact the police, Father threatened: "People do desperate things when they have nothing to lose. And I have nothing to lose."

In another ex parte application, the social worker reported that on November 20, 2009, the children's teacher told her that a man fitting Father's description had picked up the children from school three weeks earlier. That night, the children were removed from Mother's home and placed back in the care of the prospective adoptive parents.

In an addendum report dated December 1, 2009, the social worker stated that while driving to the prospective adoptive parents' home that night, A.W. stated that Father took them to school. Upon arriving at the prospective adoptive parents' house, the children appeared comfortable and were eager to see their room.

The social worker further reported she spoke with E.C. on November 25, 2009. E.C. stated that Mother "has no idea of how to take care of A[.W.] and D[.W.]" and that she "agrees one hundred percent" with their removal from Mother's care. E.C. said the children missed school because Mother did not take them; she did not bathe them or help them with their homework. E.C. said that about a month and a half earlier, she began helping Mother care for the children because the children were "running rampant," fighting, screaming, and kicking each other. E.C. took the children to and from school, and kept them in her care until about 8:00 p.m., during the week; at some point, E.C. was "constantly" taking them to and from school. E.C. stated she had seen Father only outside Mother's residence until immediately before the children were removed, when

she saw him inside the residence where “he interacted with the children openly.” E.C. further stated that Father had told her he had recently dropped the children off at school and when asked by a school staff member who he was, he said he was E.C.’s boyfriend, Miles. He also told Erica, “[i]f Child Protective Services comes around here, I was never here.”

The social worker reported Mother began having monitored visits with the children on November 26, 2009; the visits went “okay.” Mother appeared somber. On one occasion, D.W. threw a tantrum in which he cried and yelled, “I hate my life” and “[l]eave me here, let someone take me.” A.W. told Mother that they were going to stay at the prospective adoptive parents’ house “forever” and that she had lost them twice. One of the prospective adoptive parents stated that the children had had incidents of negative behavior since they were removed from Mother’s home but were otherwise doing well.

The social worker asserted, inter alia, that she “is convinced that the mother has fully demonstrated her lack of ability to care for the children and she is unable to successfully act as the children’s primary care taker”; she recommended the juvenile court dismiss the section 388 petitions and terminate Mother’s and Father’s parental rights.

## VII.

### THE JUVENILE COURT POSTPONES THE HEARING ON THE SECTION 388 PETITIONS AND THE PERMANENCY HEARING IN LIGHT OF SSA’S CHANGE IN RECOMMENDATION TO NOW SUPPORT THE TERMINATION OF PARENTAL RIGHTS; SSA FILES FURTHER ADDENDUM REPORTS.

In light of SSA’s change in position to support the termination of parental rights, the juvenile court “set out” the hearing on the section 388 petitions and the originally scheduled permanency hearing. SSA filed several addendum reports which included the following information.

The prospective adoptive parents reported that during the majority of Mother's visits in December 2009, which they monitored, Mother would sit down and watch the children play, leaving the prospective adoptive parents to intervene when the children fought. She required advice and help with the children.

During one visit, Mother asked one of the prospective adoptive parents if she could use his cell phone to ask S.W. to pick her up. The prospective adoptive parent noticed that Mother dialed her home phone number, but later saw Father driving Mother's car on a nearby street and then turning on another street after it appeared Father recognized the prospective adoptive parent. During another visit, at a park, Mother told the prospective adoptive parents that S.W. would be dropping off food for her and the children. One of the prospective adoptive parents saw Mother's car parked some distance away near a community center. He saw Father drop off a container of food by a building, and leave. Mother appeared extremely nervous. When she was told Father was seen dropping off food, Mother became quiet and said there had been a mistake because he was in Florida and her car was in Las Vegas for repairs. (She later told the social worker that neither prospective adoptive parent had told her that he had seen Father that day.)

The children told the prospective adoptive parents that Father always worked in the shed at Mother's residence. They talked about his cooking and making a wooden gun. They discussed Mother having them drink out of baby bottles and watching movies which gave them nightmares.

In January 2010, the children's therapist stated that when the children were originally in the prospective adoptive parents' care, the children were on time for and never missed appointments. After they returned to Mother's care, the children began to regress and become more aggressive, and their attendance was inconsistent. Mother failed to follow through on tasks and was placed on an attendance contract. The therapist commented that more work was needed on attachment "because the children did not have an attachment with the mother." The therapist stated that when the children returned to

Mother's care, she felt that all the progress the children had made was gone and they had to start over again.

The social worker reported that it appeared the children had formed a secure attachment to the prospective adoptive parents who had fostered their growth and development, nurtured them, and provided them with a loving structure and routine since March 2008. The children were observed seeking out the prospective adoptive parents for comfort, direction, and reassurance. The prospective adoptive parents consistently expressed their commitment to the children and their desire to adopt them should parental rights be terminated.

In February 2010, the children were reportedly "doing great" at school. One teacher commented the prospective adoptive parents "are doing a fantastic job with the boys and they're in a good place." The teacher also stated the prospective adoptive parents "even come in to help out the class and it's as if they've done this all their lives." The children refer to the prospective adoptive parents as "daddy Joseph" and "daddy Kevin."

In an addendum report dated March 23, 2010, the social worker stated that in her opinion, Mother "demonstrates a lack of parental control over the children. The mother does well with showing the children affection, but when it comes to disciplining and following through with consequences the undersigned has not seen the mother demonstrate these skills."

From January through the beginning of April 2010, Mother participated in monitored visits with the children for two hours twice a week. Mother brought a portable television/DVD player, toys, and food to the visits. Mother and the children were affectionate with each other; the children said, "I love you" to Mother and reportedly expressed the desire to live with her.

## VIII.

### MOTHER FILES ANOTHER SECTION 388 PETITION; MOTHER'S SECTION 388 PETITIONS ARE DENIED; THE JUVENILE COURT ORDERS MOTHER'S AND FATHER'S PARENTAL RIGHTS TERMINATED; MOTHER AND FATHER APPEAL.

In April 2010, Mother filed another section 388 petition seeking an order returning the children to her custody or, alternatively, for her to receive additional reunification services. Mother did not attend the hearing on the section 388 petitions or the permanency hearing. The juvenile court denied all of Mother's section 388 petitions. The court found it likely the children would be adopted and ordered Mother's and Father's parental rights terminated. The court found that the provisions of section 366.26, subdivision (c)(1)(A) and (B)(i) through (vi) did not apply and that the adoption of the children and the termination of parental rights were in the best interest of the children. Mother and Father separately appealed.

## DISCUSSION

Mother and Father solely contend in their appeals the juvenile court erred by finding the parent-child relationship exception to the termination of parental rights inapplicable as to Mother. For the reasons discussed *post*, Mother's and Father's argument lacks merit.

### I.

#### THE PARENT-CHILD RELATIONSHIP EXCEPTION AND THE APPLICABLE STANDARD OF REVIEW

Section 366.26, subdivision (c)(1)(B)(i) allows the juvenile court to decline to terminate parental rights over an adoptable child if it finds "a compelling reason for determining that termination would be detrimental to the child" because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit

from continuing the relationship.” Mother had the burden of proving both prongs of the parent-child relationship exception were satisfied. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527; *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 949.)

There is some dispute among appellate courts regarding how to properly frame the applicable standard of review of a juvenile court’s finding that the parent-child relationship exception is inapplicable. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) In *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351, the appellate court stated that although reviewing courts have “routinely applied the substantial evidence test” to the juvenile court’s finding under section 366.26, subdivision (c)(1)(B)(i), the court considered the abuse of discretion standard to be more appropriate because the juvenile court in such circumstances is required to make a “quintessentially discretionary determination.” The court further noted, however, “[t]he practical differences between the two standards of review are not significant.” (*In re Jasmine D.*, *supra*, at p. 1351.)

In *In re Bailey J.*, *supra*, 189 Cal.App.4th at page 1314, the appellate court stated: “In our view, both standards of review come into play in evaluating a challenge to a juvenile court’s determination as to whether the parental or sibling relationship exception to adoption applies in a particular case. Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court’s determination. Thus, as this court noted in *In re I.W.* (2009) 180 Cal.App.4th 1517 . . . , a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental or sibling relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” In *In re Bailey J.*, the appellate court further stated that the determination whether the existence of such a relationship constitutes a compelling reason for

determining termination of parental rights to be detrimental is, however, reviewed for an abuse of discretion. (*Id.* at p. 1315.)

We do not need to address which court's iteration of the applicable standard of review is most correct. Even were we to construe the applicable standard of review liberally in Mother's favor by reviewing the record to determine whether substantial evidence supported the juvenile court's finding, the record supports the juvenile court's finding that the parent-child relationship exception is inapplicable.

## II.

### THE JUVENILE COURT DID NOT ERR BY FINDING THE PARENT-CHILD RELATIONSHIP EXCEPTION INAPPLICABLE AS TO MOTHER.

At the permanency hearing, the juvenile court stated that it found Mother had regularly visited the children and "maintained that visitation schedule for the most part," within the meaning of section 366.26, subdivision (c)(1)(B)(i). The court, however, found that Mother did not satisfy the second prong of the exception, which required a showing the children would benefit from continuing their relationships with her.

In *In re Autumn H.*, *supra*, 27 Cal.App.4th at pages 575-576, the appellate court stated: "In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly

harm, the preference for adoption is overcome and the natural parent's rights are not terminated. [¶] Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent. [¶] At the time the court makes its determination, the parent and child have been in the dependency process for 12 months or longer, during which time the nature and extent of the particular relationship should be apparent. Social workers, interim caretakers and health professionals will have observed the parent and child interact and provided information to the court. The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond."

At the permanency hearing in this proceeding, the juvenile court explained: "It is clear that [Mother] loves [the children] and that they love her. They do express that affection. But the case law is very clear in looking at the relationship to determine if it is a parental-child relationship, who provides the day-to-day care, the day-to-day nurturing, the follow through on things that need to be addressed such as counseling issues, especially in this case. We have the PCIT therapy. That is very important. [¶] The caretakers are the ones that do provide these services for the children. They do look to the de facto parents for that structure in their lives. The evidence does suggest that they follow the direction that is provided by the de factos. The consequences, they know there

are consequences when they act up or they do something that's inappropriate so to speak. They look to that because I think that they do desire to have structure so that they know exactly what to expect from their parents and the role they play in their lives. [¶] . . . Mother's burden would have been to establish that the bond that she does have with the children would if separated be detrimental to the children, and there certainly does not appear to be facts to support that."

The court further stated: "The children, of course, love her and there is a bit of a loving relationship. But there is also during the visitation inappropriate parenting skills, and there just are things that are simply not appropriate parenting. I can't really think of a better way to say it actually. And the example of such could be certainly the failed trial return. Those were factors that resulted in the children being redetained. The aggressive behavior had returned. The school issues, there were nonattendance at school issues. These things had deteriorated significantly and thus the children were redetained. And this would certainly indicate that the unsettling parenting and this unsettling lifestyle [are] certainly not worth continuing. To do so would be to their detriment. The children do need permanency, and the evidence supports that permanency waits for them and that they would thrive in that environment."

The juvenile court's finding that severance of the children's parental relationship with Mother would not deprive them of a substantial, positive emotional attachment such that they would be greatly harmed is amply supported by evidence in the record. The children were four years old at the time they were detained. Mother had not provided the children care for months prior to that due to her mental and physical health problems. With the exception of a few overnight visits in the summer of 2009 and the trial visit which commenced on August 3 and ended on November 20, 2009, the children have been in the care and custody of the prospective adoptive parents since March 2008.

The record shows the children are attached to the prospective adoptive parents who have worked diligently to provide for the children's needs. The prospective adoptive parents have demonstrated their commitment to providing the children a stable, nurturing, and permanent home. The children have formed a secure attachment to the prospective adoptive parents and appear comfortable and secure in their home. The record supports the finding the children thrive when in the care of the prospective adoptive parents and regress in the care of Mother. Under her care, the children frequently missed school and therapy sessions. They behaved more aggressively and she failed to provide sufficient consequences for their inappropriate behavior.

It is undisputed Mother loves the children and they love her. Mother brought them food and toys to the visits, and expressed love and affection which the children returned. However, "[e]vidence of 'frequent and loving contact' is not sufficient to establish the existence of a beneficial parental relationship." (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.) The record shows Mother did not occupy a parental role in the children's life.

*In re Jerome D.* (2000) 84 Cal.App.4th 1200, which Mother cites in her opening brief, is readily distinguishable from this case. In that case, a psychologist testified the child would suffer great detriment if the relationship with his mother were terminated, and continuing the relationship with the mother would benefit the child developmentally. (*Id.* at p. 1207.) No such evidence was presented in this case.

In short, here, the record shows the prospective adoptive parents have occupied a parental role in the children's lives and the termination of Mother's parental rights would not deprive the children of a "substantial, positive emotional attachment such that [they] would be greatly harmed." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Substantial evidence therefore supports the juvenile court's finding the parent-child relationship exception was inapplicable as to Mother.

DISPOSITION

The order is affirmed.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.